

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DANE HARREL, et al.,

Plaintiffs,

v.

KWAME RAOUL, et al.,

Defendants.

Case No. 23-cv-141-SPM

FEDERAL FIREARMS LICENSEES OF
ILLINOIS, et al.,

Plaintiffs,

v.

JAY ROBERT "JB" PRITZKER, et al.,

Defendants.

Case No. 23-cv-215-SPM

CALEB BARNETT, et al.,

Plaintiffs,

v.

KWAME RAOUL, et al.,

Defendants.

Case No. 23-cv-209-SPM

JEREMY LANGLEY, et al.,

Plaintiffs,

v.

BRENDAN KELLY, et al.,

Defendants.

Case No. 23-cv-192-SPM

Transcript of Status Conference
January 12, 2024

Proceedings held by Zoom before
the Honorable **STEPHEN P. McGLYNN**,
United States District Judge Presiding

REPORTED BY:

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Following proceedings recorded by mechanical stenography;
transcript produced by computer-aided transcription.

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TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 1:32 p.m.)

THE COURTROOM DEPUTY: United States District Court for the Southern District of Illinois is now in session, the Honorable Stephen McGlynn presiding. Court calls Case Number 23-cv-209, Caleb Barnett et al., v. Kwame Raoul, et al. Case is called for a status conference.

Parties, if you would please identify yourselves for the record.

MR. ROWEN: Good afternoon, Your Honor. This is Matthew Rowen from Clement & Murphy on behalf of the Barnett plaintiffs.

MR. MICHEL: Good afternoon, Your Honor. Chuck Michel appearing for the FFL Illinois plaintiffs. And with me today is Sean Brady and Kostas Moros.

MR. SIGALE: Good afternoon, Your Honor. David Sigale, S-i-g-a-l-e, on behalf of the plaintiffs in Harrel v. Raoul, 23-cv-141.

MR. T. MAAG: Thomas Maag on behalf of the Langley plaintiffs.

MR. P. MAAG: Peter Maag. Peter Maag on behalf of the Langley plaintiffs as well.

THE COURT: Okay.

MR. OWENS: Your Honor, Troy Owens on behalf of McHenry County and the sheriff of McHenry County.

1 MR. PINTER: Gary Pinter on behalf of the Barnett
2 plaintiffs.

3 MR. HILL: Keith Hill on behalf of Cole Shaner.

4 MR. WELLS: Good afternoon, Your Honor.
5 Christopher Wells on behalf of the governor, the attorney
6 general, and ISP Director Kelly.

7 THE COURT: All right.

8 MS. MUSE: Good afternoon. Kathryn Muse on
9 behalf of the same parties as Mr. Wells.

10 THE COURT: All right. Anybody else?

11 MS. ASFOUR: Katherine Asfour on -- Your Honor,
12 Katherine Asfour on behalf of the Randolph County defendants.

13 THE COURT: Anybody else? Everybody I see on my
14 screen has already identified themselves. I'm told that there
15 are some who do not have their camera on, but are participating
16 just by watching it one direction. Somebody else just joined
17 us? Is that you, Peter? I'm squinting my eyes.

18 MR. P. MAAG: It is, Your Honor.

19 THE COURT: Okay. All right. We're going to --
20 I want to set this matter to determine if there's going to be a
21 need for evidentiary hearings, to accomplish a fully developed
22 record, starting with Barnett. Do you anticipate calling
23 witnesses or offering deposition testimony?

24 MR. ROWEN: So this is Matthew Rowen for the
25 Barnett plaintiffs, Your Honor. So I want to answer that in two

1 ways. So the first way is, if we are to operate under the
2 Seventh Circuit's opinion, then yes, I do believe that we will
3 want to have a relatively robust evidentiary presentation.

4 THE COURT: I'm having a hard time hearing you,
5 so you guys are going to have to speak loudly and clearly. The
6 voices are getting kind of lost in this courtroom. So I would
7 also speak a little slower than you were. So go ahead.

8 MR. ROWEN: Sure. Please let me know if you
9 cannot hear me at all.

10 THE COURT: I can hear you fine now. Thank you.

11 MR. ROWEN: Great.

12 So as I was saying, if we are to proceed under
13 the Seventh Circuit's opinion as it currently stands, then I do
14 believe that the plaintiff, specifically the Barnett plaintiffs
15 will want to put on a relatively robust evidentiary
16 presentation. But, you know, I speak for the Barnett plaintiffs
17 and I believe I have at least two of the other plaintiffs'
18 groups who agree with this, that given that the Supreme Court
19 may have a different view of the law and given that our clock to
20 seek cert is ticking, that it may make more sense to pause any
21 potential evidentiary presentation pending certiorari.

22 THE COURT: Not going to happen. It's not going
23 to happen. We're going forward. There are questions of fact
24 that are raised. And the Supreme Court's going to do what it's
25 going to do. In this case, we are going to conduct a hearing

1 and I'm going to address all the questions of fact and apply the
2 law to those questions of fact so that we have a fully developed
3 record, and we are going to move with deliberate speed in
4 getting to that point. So you're going to have to think about
5 what evidence you want to marshal, how you're going to present
6 it, what witnesses you're going to use, and how long that's
7 likely to take. All right?

8 MR. WELLS: Your Honor, I'd just like to make
9 clear for the record that the defendants are in agreement with
10 Mr. Rowen and three of the four plaintiffs' groups that a stay
11 is appropriate. It's the parties' job to present the case as
12 they see fit. If they think they need to seek cert and that the
13 governing standard in the case is going to change, then that's
14 the best strategy for their clients, then they're entitled to
15 pursue that strategy. And it's a waste of resources for the
16 Court to conduct an evidentiary hearing if the plaintiffs think
17 the legal standard is going to change.

18 I would note that in the Northern District, one
19 Court this morning already entered it today. So the Seventh
20 Circuit has consolidated these cases on appeal. The idea that
21 we would have one case out of several race forward while the
22 other cases are stayed, I don't think that's going to be well
23 received by the Seventh Circuit, Your Honor. So while I
24 understand if the Court has an interest in moving quickly, I
25 think the -- it's ultimately up to the parties how they believe

1 it's appropriate to prosecute their claims.

2 THE COURT: The Seventh Circuit has remanded this
3 case to me for further proceedings.

4 MR. T. MAAG: I agree with Your Honor. The
5 Langley plaintiffs are prepared to proceed. The fact that the
6 Supreme Court may or may not grant certiorari I think is
7 irrelevant to whether or not this Court develops a factual
8 record and makes factual findings.

9 MR. WELLS: My understanding from my conversation
10 with Mr. Rowen is, and based on how at least three out of the
11 four of the plaintiffs in this case have presented it, they
12 believe that they -- they should win out of the gate. They
13 filed motions for judgment essentially when they filed their
14 complaint. They believe I think that the Seventh Circuit's got
15 it wrong and that these factual issues that the Seventh Circuit
16 has identified are ultimately not going to be relevant, so why
17 would we spend resources of both the parties, the Court, the
18 attorneys involved, on issues that at least, you know, a large
19 majority of the people involved in this case, they think are not
20 going to be controlling.

21 And obviously if the Seventh Circuit as it's
22 ruled, if that ruling stays in effect, then it's a different
23 scenario. But I think we are very much in alignment with the
24 Barnett plaintiffs, what I understand the Harrel plaintiffs'
25 position to be, and also the FFL plaintiffs' position. In

1 conducting an evidentiary hearing on the merits on an
2 accelerated timeline when the legal standard is currently being
3 adjudicated through cert petition is a waste.

4 THE COURT: This case is not -- this case is not
5 up on cert. There have been multiple filings with the Supreme
6 Court begging them to grant certiorari in this and in many other
7 cases, and they've consistently turned that down. One of the
8 things the Courts have said that they wanted is they would like
9 a fully developed record. This has been remanded to me to
10 address questions of fact that have not been addressed, and
11 there's a reticence on the part of reviewing Courts to rule on
12 these things before there has been a fully developed record. So
13 we're going to proceed in developing record and we're going to
14 proceed promptly.

15 What other plaintiffs' lawyers want to be heard
16 on that?

17 MR. T. MAAG: Judge, Thomas Maag. Just for the
18 record, I agree with Your Honor that we should proceed on the
19 merits on the record that the -- as the Court noted, several
20 other plaintiffs in other cases have asked the Supreme Court for
21 review. Thus far, it has not been granted. Obviously if the
22 Supreme Court were to grant certiorari, my position might
23 change. But unless and until we have a writ of certiorari
24 granted, I think we have an obligation to proceed on the merits.

25 THE COURT: All right.

1 MR. MICHEL: Your Honor, Chuck Michel for the FFL
2 Illinois plaintiffs. I would just add just for clarity, what
3 the plaintiffs' intention was was to file a petition for a writ
4 of certiorari within the next couple of weeks. The other
5 case -- the other Supreme Court decisions were basically shadow
6 docket decisions where they asked for emergency relief, not cert
7 petition granting, to the extent it matters. Just want to make
8 sure that's clear.

9 THE COURT: I've been following it closely.
10 We're here to talk about a hearing, marshaling of your evidence,
11 putting everything before the Court that you want to put before
12 the Court for the Court to make factual findings to address the
13 issues raised by the plaintiffs in this case. All of the
14 plaintiffs have asserted that fundamental constitutional rights
15 are involved in this case and that they individually or as a
16 group, that they are suffering significant damage and injury
17 because their constitutional rights are being violated. So
18 we're going to get to that.

19 We went the route with requests for injunctive
20 relief. That took a year, about a year. And now we're here,
21 having the injunctive relief, in my situation, stayed, and the
22 case being sent back to the district judges to proceed further.
23 That's what I'm going to do. If something happens in the
24 interim, okay. But until then, that's what's going to happen in
25 this courtroom. Other judges in other districts can make the

1 decisions they want to make. A lot of the record that would be
2 developed here would be perfectly relevant to the other cases,
3 but this is what we're going to do. So --

4 MR. WELLS: Your Honor?

5 THE COURT: Yes?

6 MR. WELLS: If I may?

7 THE COURT: Identify yourself when you speak.
8 When you speak, you have to identify yourself.

9 MR. WELLS: Sure. Your Honor, this is Mr. Wells.
10 Again, I understand the Court's view on how the parties chose to
11 litigate this case and their desire to pursue this matter on an
12 interlocutory appeal. But that's the parties' decision, Your
13 Honor. The parties are represented by capable counsel. I
14 understand they make certain assertions about fundamental rights
15 and the Court apparently has a view that those fundamental
16 rights are being infringed, but it's up to plaintiffs' counsel
17 to decide how to litigate the case. Plaintiffs' counsel
18 believes that they should stay the proceedings while certiorari
19 is considered because the scope of the case may change.

20 And in the interest of judicial economy, we again
21 think it makes sense, and frankly it's consistent with what the
22 Seventh Circuit has said. And in particular, in the Ewing v.
23 Carrier case, Judge Easterbrook in 2022 said the judiciary has
24 an interest independent of litigants' goals in avoiding messy,
25 duplicative litigation. All litigants and lawyers must avoid

1 multiplying litigation. By pursuing this, we've got a stay in
2 the Northern District. There's likely to be another stay in the
3 Northern District, as we understand the plaintiffs there also
4 seek certiorari, plaintiffs also seek a stay. All of this is
5 fundamentally inconsistent with how the Seventh Circuit has
6 handled this particular case and how the Seventh Circuit views
7 these matters should be handled in the interest of judicial
8 economy. So with all due respect, I need to make that note for
9 the record.

10 THE COURT: Okay.

11 MR. T. MAAG: Thomas Maag for the Langley
12 plaintiffs. We do not believe that the case should be stayed.
13 So to the extent counsel is asserting all plaintiffs assert that,
14 that is not true.

15 MR. WELLS: I'm not asserting that. I understand
16 Mr. Maag's position is different than every other group of
17 plaintiffs' counsel in the state.

18 MR. SIGALE: Your Honor, may I speak?

19 THE COURT: Identify yourself for the record.

20 MR. SIGALE: David Sigale, S-i-g-a-l-e, on behalf
21 of the Harrel plaintiffs. All the counsel that have said that
22 our position is the same as FFL and Barnett is correct. We do
23 share in that opinion. We'll of course comply with what the --
24 with the Court ruling. The concern is, I'm listening to
25 everyone speak, is that we're going to be preparing a cert

1 petition and preparing for an evidentiary hearing at the same
2 time. Might I suggest that --

3 THE COURT: How many times have you guys briefed
4 this case? How many times have you argued this case, in how
5 many courts? You guys have briefed this case -- wait. All of
6 you guys. You have briefed this case in state courts, appellate
7 courts, and before the Illinois Supreme Court. You briefed this
8 case and argued this case at the District Court level and at the
9 Seventh Circuit level.

10 MR. SIGALE: Understood, Your Honor. The only
11 thing --

12 THE COURT: And I've read the briefs and they're
13 very detailed and they -- they're very well written. But this
14 Court --

15 MR. SIGALE: I was --

16 THE COURT: Someone's trying to interrupt me.
17 Raise your hand. Who's trying to interrupt me?

18 MR. MICHEL: When you're finished, Your Honor,
19 I'd love to speak. I didn't mean to interrupt.

20 THE COURT: Well, go ahead, Chuck.

21 MR. MICHEL: I would just point out, if we're
22 going to go forward, the briefs that we've done in the past were
23 basically the Bruen textual historical analog briefs. It seems
24 like under the Seventh Circuit's briefs or new sort of approach,
25 we're going to have to do a lot of different things. I don't

1 know exactly what that's going to involve, some kind of
2 distinction between military applications and civilian
3 applications, factual questions about whether or not an AR-15 is
4 the same as an M16 or something along those lines, then all the
5 other guns. I think it's going to be a lot of expert testimony,
6 a lot of technical, firearm-related technical information that
7 would not be necessary if we -- if the Seventh Circuit had
8 adopted the approach that we urge them to adopt.

9 But now, bound by the Seventh Circuit as we all
10 are, I think it's going to be a very different type of trial if
11 the Court does want to go forward. It might make sense to allow
12 the parties to sort of meet and confer and come up with some
13 sort of a case management plan or case presentation, like a
14 trial notebook or something, that would sort of lay out how
15 we -- what we -- what the state thinks the burden is now under
16 the Seventh Circuit, what we propose to present as evidence to
17 try and meet that burden. Not to tell Court how to run its own
18 calendar, but I think it's going to be a bit of a can of worms
19 that we have to hopefully help the Court manage.

20 MR. WELLS: Your Honor, if I may -- Mr. Wells on
21 behalf of the state -- just respond to that proposal. I think
22 that that -- the extent that the Court is going to proceed,
23 despite the requests that have been made for a stay, I do think
24 there's some streamlining that could take place through
25 conversations with the parties. We have not had a Rule 26F

1 discovery conference in this case. We don't have Rule 26(a)
2 disclosures in this case. There's been no discovery on the
3 Second Amendment claims that are common across all these claims,
4 across these cases. So I do think in the interest of expediting
5 and not being duplicative, the parties could have very
6 constructive conversations about all that's already in the
7 record now, what do we need to add to the record or not add to
8 the record, or do we want to do a trial on the papers. All of
9 these are the types of questions that I think we could have
10 constructive conversations about, if we're in the position where
11 the Court's insisting that we're going forward.

12 MR. SIGALE: Your Honor, David Sigale again. I
13 was going to suggest that perhaps we could set this matter for a
14 further status regarding the cert petitions and regarding the
15 factual issues. And I think that request probably dovetails
16 nicely with what other counsel just said.

17 MR. T. MAAG: Thomas Maag for the Langley
18 plaintiffs. I have a motion requesting to either conduct
19 discovery or have the Rule 26 discovery conference. I think
20 discovery is appropriate. And whether a cert petition is filed,
21 I think it's highly likely it will be, and whether a cert
22 petition is ultimately granted, which is potentially another
23 question, I think it's a completely different question than
24 whether or not the parties are ordered to exchange initial
25 disclosures, to send interrogatories and document requests and

1 potentially take depositions. This doesn't require years of
2 discovery, but certainly something if we're going to have an
3 evidentiary hearing, which is clear under the Seventh Circuit's
4 order, if it stands, we're going to, we need to conduct that
5 discovery.

6 Yes, we've repeatedly briefed this under various
7 standards, but we need to have the facts so that when the case
8 is presented, whether it's under the Bruen standard, under the
9 Seventh Circuit standard, or possibly if the Supreme Court
10 issues an opinion, Ravini [phonetic], whatever that case is,
11 under that standard, if it's any different, we need to -- I'll
12 present whatever facts, the controlling authority, the appellate
13 or Supreme Court level thinks is appropriate. We just need to
14 get to that.

15 THE COURT: Mr. Wells, what type of discovery do
16 you believe that the government needs to engage in to figure out
17 whether or not the legislation it passed is constitutionally
18 sound or unsound?

19 MR. WELLS: Well, Your Honor, I would say a
20 couple things to that. One, as the record currently stands, the
21 Seventh Circuit found that we're likely to succeed on the
22 merits. We're the defendants. So it's really -- we're in a
23 responsive posture here. We understand from plaintiffs' counsel
24 that they -- they have strategic choices they have to make about
25 how they're going to shape their case, given what the Seventh

1 Circuit has said, which I think is clearly different than what
2 they thought it might say. So that's why I -- I'm not trying to
3 be evasive. We really need to know who they plan to call.

4 So for instance, they cite things like a survey
5 from Professor William English. We don't know if that's going
6 to be one of their witnesses. If so, we'd like to depose him.
7 Professor Gary Kleck, somebody else they cite various articles
8 from in their complaint. Is that a party expert witness, is
9 that somebody they're going to call as a witness? If so, we'd
10 like to depose him. There's another Professor David Kopel. We
11 don't know whether that's going to be an expert witness that
12 they're going to call. We have no -- again, we have no
13 Rule 26(a) disclosures from the plaintiffs telling us who
14 they're going to use to prove their case. Obviously before any
15 evidentiary hearing, we'd want to depose those folks to know
16 what they're going to say. So in terms of --

17 THE COURT: And you know what, all that stuff is
18 going to happen. That's why we're having this get-together.
19 You guys are now going to think about how you are going to
20 present this case for a hearing on the merits, one.

21 Two, how we are going to fully develop the record
22 so that when there is a final determination, the Courts can look
23 at the various firearms, the various attachments, the -- and
24 decide whether or not they fall into whatever particular test
25 they decide to apply. Is it going to be Heller and Bruen as the

1 plaintiffs understand Heller and Bruen? Is it going to be
2 Friedman and Bevis? I mean, this is -- does he pronounce it
3 Bevis or "Bevis"? I've heard it pronounced both ways.

4 MR. WELLS: I believe it's "Bevis," Your Honor.

5 THE COURT: Okay. So, but we've had substantial
6 delays in trying to get this case resolved on the initial
7 pleadings and those have not succeeded. My job as a trial judge
8 is to get this case moving and get the factual issues developed,
9 resolved, and then the -- this isn't going to be the last place
10 where this case is going to be reviewed. But this is going to
11 be a place where a record is fully developed and then the Courts
12 of review, Seventh Circuit, Supreme Court, can make their
13 decision, where I got it wrong, where I got it right.

14 And so Plaintiffs, you guys have been appellate
15 lawyers. You're about to become trial lawyers. How am I going
16 to try this case; who are we going to -- what experts am I going
17 to offer, if any; how am I going to prove what firearms are
18 commonly held or in common use; how am I going to prove the
19 technical capabilities of these particular firearms? You guys
20 are going to decide what you're fighting over.

21 For instance, I don't know if anybody is
22 particularly worked up at the state of Illinois says you can't
23 have a grenade launcher. I don't know if that's going to be
24 disputed. But we are going to start dealing with those sort of
25 things now.

1 MR. WELLS: Your Honor --

2 THE COURT: When I set aside time for that
3 hearing, one of the things that we want to talk about is, all
4 right, here's how many witnesses we anticipate calling, whether
5 they're going to be live, whether we have an evidence
6 deposition, whether we have certain documents that we've all
7 stipulated to can be admitted to prove or support different
8 things. There's nothing to prevent you to do that and you're
9 going to be required to meet and probably meet on multiple
10 occasions to try to work this thing through and figure out how
11 you're going to present your case. The parties do not agree on
12 the law or the facts in this case.

13 For the Second Amendment claims, this is not a
14 pure question of law. There are questions of fact that have
15 been sent back to me by the Seventh Circuit. And so if you're
16 not a trial lawyer, talk to trial lawyers in your firm and say,
17 how would you try this case, how would you present it?

18 And by the way, this is not -- this is not
19 something we're going to take three years to conduct discovery.
20 This case is going to be presented very promptly. Nobody's
21 going to miss a summer vacation working on this. It's going to
22 be done before that. So you need to think about it. I'm
23 hearing a lot of resistance, but start putting together your
24 case.

25 Barnett, who wants to be -- so let's just -- let

1 me just put it this way. You guys are going to figure out what
2 witnesses you're going to call. You're going to make those
3 witnesses available for deposition if the other side wants a
4 deposition. That's going to be done promptly. The plaintiffs'
5 lawyers are going to work out amongst themselves what lawyer is
6 going to examine the witness or conduct the examination or the
7 cross-examination on behalf of the plaintiffs. We're not going
8 to have -- we're not going to have 16 different lawyers asking
9 the same questions. I do understand that there are some
10 variations for some of the parties, and under those
11 circumstances, counsel will be allowed to inquire of the witness
12 about factual issues that may not be relevant to one of the
13 other party plaintiffs. So you're going to work that out and
14 we're going to pull this all together.

15 Assault weapons is not a scientific term. It's
16 more of a political term. And it varies from who you talk to,
17 and it varies how it's defined. I'm going to look at each and
18 every one of these guns, each and every one of these attachments
19 that the parties are saying violates the -- banning them
20 violates their rights, and we're going to analyze each of them.
21 We're going to analyze each of them with respect to whether they
22 are truly reserved for military use. If civilian --

23 Somebody's dying to talk, but they ought to be
24 dying to listen.

25 We're going to look at each of these things.

1 We're going to study each of these things. And I'll make an
2 independent judgment with respect to the -- these items, these
3 arms, and then having analyzed their capabilities, their design,
4 their uses, then plug in the tests that are or may be
5 applicable.

6 As I sit here, I anticipate saying that this
7 test, Test A is articulated in this case and that case. Test B
8 is articulated in a different case. Under both tests, I will
9 analyze these cases. I understand that the parties see things
10 widely differently on the law. But there is a lot of things
11 in -- there's a lot of ways I think that Supreme Court cases and
12 Friedman and Bevis can be harmonized for purposes of this
13 proceeding.

14 The Supreme Court can always take cert, but until
15 then, we are now at the trial phase of -- or the evidentiary
16 phase of this hearing. It's not a jury trial. This is a
17 request for declaratory judgment. And so I'm going to declare
18 one way or the other what the judgment of this case is based
19 upon the facts. So I'm going to keep a short leash on this.

20 How long do the plaintiffs' lawyers need to
21 confer amongst themselves and then with Mr. Wells?

22 MR. ROWEN: This is Matthew Rowen, Your Honor,
23 for the Barnett plaintiffs. I think among the plaintiffs'
24 lawyers, we'd need, you know, at least a week. You can't hear
25 me. We need at least a week among the plaintiffs' lawyers. You

1 know, we have tried a similar case and so, you know, we have
2 some experience in terms of witnesses and how all that goes.
3 That was a large capacity magazine case in Oregon where it was
4 six trial days.

5 THE COURT: Okay. How long did it take -- how
6 long did it take to try that case?

7 MR. ROWEN: It was six trial days, and before
8 then, there were I believe a dozen depositions, and that was
9 just on magazines. And, you know, here we're adding the overlay
10 of a thousand different models of firearms. So, you know, I
11 think it's going to take some time to get the level of
12 granularity that is arguably required by what the Seventh
13 Circuit decided. But, you know, we will discuss amongst
14 plaintiffs' counsel, and then we will put forward a plan that we
15 can, you know, meet and confer with Mr. Wells and the state and
16 the other defendants.

17 THE COURT: Any other plaintiffs' counsel want to
18 be heard?

19 MR. T. MAAG: Thomas Maag. I think a week to
20 discuss amongst plaintiffs' counsel is entirely reasonable. I
21 think that we'd probably ought to be required to at least
22 initiate written discovery in the meantime in the interest of
23 getting this case moving. Whether or not we have agreement with
24 the defendants on the exact parameters, we're going to have to
25 engage in written discovery anyway.

1 MR. WELLS: Your Honor, if I could be heard
2 briefly on that discovery discussion.

3 THE COURT: Can't tell who's talking.

4 MR. WELLS: I'm sorry. It's Mr. Wells. I'm
5 sorry, Your Honor. So I would again just reiterate, we need
6 Rule 26(a) disclosures to know --

7 THE COURT: All right.

8 MR. WELLS: Your Honor said --

9 THE COURT: How many days do you need to make
10 your Rule 26 disclosures?

11 MR. WELLS: That's plaintiffs' question at this
12 point, because as I said, the record at this point -- it's
13 theirs to develop.

14 MR. ROWEN: Yes, Your Honor --

15 MR. T. MAAG: Thomas Maag for the Langley
16 plaintiffs. I can have my Rule 26 disclosures out in ten days
17 or less.

18 THE COURT: All right. So I'm going to direct
19 that the plaintiffs' attorneys meet and confer and to come to
20 grips with the fact that there is going -- that this case is
21 going to proceed to a hearing in which contested questions of
22 fact are going to be addressed, and that the record you develop
23 will be considered a, quote, fully developed record, what do you
24 need to prove your case.

25 I'm going to give the -- today is Friday. The

1 lawyers are to confer between now and a week from this Monday,
2 then have an additional seven days to confer with the
3 defendants.

4 I'm going to set this for another status hearing
5 in two and a half weeks. We're going to revisit this. And you
6 guys are -- I invite you to come up with something that you
7 think you can live with and that works. But this is -- this is
8 not going to be a long, drawn-out process. The hearing itself
9 might take several days to put -- to set aside.

10 But I anticipate, based upon the record that we
11 have, which is quite extensive, that there's going to be some
12 experts that come in and testify. There's going to be maybe
13 some storeowners that come in and testify about the sales of
14 firearms in Illinois and what they experience, what there's a
15 market for in Illinois, what they were selling prior to this.
16 And there may be some documents that you guys stipulate to with
17 respect to the specific capabilities of each banned firearm.
18 And, you know, you can get -- I would suspect that the
19 manufacturers would cooperate with the plaintiffs' lawyers.
20 Here's what our -- you know, here's what the owner's manual
21 says, here's what the specifications are, we know what the
22 military reserves for itself, we know what MIL-SPEC means. And
23 so we're going to take a look at those things.

24 But this is going to be on an expedited docket.
25 We're going to expedite this, because we owe it -- we owe it to

1 everybody involved to get, at least at the District Court level,
2 since the Seventh Circuit has said this is a case that cannot be
3 resolved, cannot be resolved by preliminary injunctive relief,
4 it has to go to declaratory judgment. It cannot be resolved in
5 a preliminary judgment decision.

6 And I'm instructed to develop the record further.
7 I know I sound like a broken record. But it's important that
8 you guys understand what you're going to be dealing with. There
9 are a lot of very fine lawyers in this case and a lot of lawyers
10 who have litigated these cases all over the country, lawyers who
11 have argued these cases before federal circuit courts, before
12 the United States Supreme Court.

13 It's not -- I have been studying this. I have
14 gone through all the stuff that you guys have submitted. I
15 don't think that the -- an evidentiary hearing as part of the
16 presentation for a request for declaratory judgment is going to
17 be that particularly complicated. I don't think the discovery
18 is going to take a tremendously long period of time. The
19 government -- the government has its position on why it ruled or
20 why it legislated the way it did. The plaintiffs disagree with
21 it and believe that under existing case law, the facts are that
22 some or all of these guns and attachments cannot be banned.
23 They are protected by the Second Amendment.

24 I know, Mr. Maag, you have a Fifth Amendment
25 argument. That's actually I think a pure question of law. I

1 don't anticipate there -- I mean, that's something that can
2 probably be addressed in summary judgment. But on these other
3 ones, it's contested fact.

4 So let's pick a date for the next status
5 conference. Jackie, let's look at what --

6 THE COURTROOM DEPUTY: In two and a half weeks,
7 you're in trial, so.

8 THE COURT: If I'm in trial, I can walk and chew
9 gum at the same time.

10 THE COURTROOM DEPUTY: Your three-week criminal
11 trial.

12 THE COURT: We'll do the same thing. We're going
13 to set it for a status conference on Friday.

14 THE COURTROOM DEPUTY: That's the 2nd. That's
15 the first Friday.

16 THE COURT: We'll work with that too. That's
17 February -- three weeks from now is February the 2nd?

18 THE COURTROOM DEPUTY: Mm-hmm.

19 THE COURT: Three Fridays from now?

20 THE COURTROOM DEPUTY: Mm-hmm.

21 THE COURT: All right. We're going to set it at
22 1:30. Is that a date that you or -- and I should say, and none
23 of the lawyers in your firm would be available? None of the
24 lawyers in your office would be available?

25 MR. SIGALE: David Sigale, Your Honor.

1 February 2nd at 1:30 is fine.

2 THE COURT: Mr. Wells?

3 MR. WELLS: Works for us, Your Honor.

4 THE COURT: All right.

5 MR. T. MAAG: Thomas Maag. That's fine.

6 THE COURT: Anybody else want to be heard?

7 So between now and February the 2nd, you guys
8 can -- you can agree that we're going to do witness disclosures,
9 preliminary rule disclosures, share it with the other side, and
10 you can even start talking about depositions. The -- one thing
11 I think we've learned today is that the fact that you guys might
12 agree to a particular schedule doesn't mean that I'm going to go
13 along with it and this case is being expedited.

14 All right. Anything else for any of the
15 plaintiffs?

16 MR. SIGALE: David Sigale, Your Honor. No.
17 Thank you, Your Honor.

18 THE COURT: Mr. Wells, anything else on behalf of
19 the state parties?

20 MR. WELLS: Just in terms of the scope of the
21 claims, Your Honor, I think we agree with your view on the Fifth
22 Amendment question, and we'll be filing our response on the
23 19th. There is the unresolved question of the Langley vagueness
24 claims. We think the Court's rulings in December are strongly
25 indicative that it's a question of law and that those claims

1 should also be dismissed. So we --

2 THE COURT: Are you talking about vagueness?

3 MR. WELLS: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. WELLS: So we will confer as a team, but I
6 think one of the ways in which we think this could be expedited
7 is to again streamline and focus on the Second Amendment claims
8 as opposed to the additional claims that are in the Langley
9 case. And just wanted to note that for the Court's benefit so
10 that we can again focus on where we think the commonality here
11 is to move expeditiously.

12 THE COURT: Yeah, I don't -- I don't think -- I
13 don't think anyone has raised -- has anyone raised a vagueness
14 claim on the basis of, as applied to them, with respect to like
15 the registration?

16 MR. WELLS: Not that I'm aware of, Your Honor.
17 It's Mr. Wells.

18 THE COURT: As I said in my order, the -- it
19 doesn't suffer from a lack of clarity of what they're trying to
20 accomplish. We understand what the core of this -- what the
21 statute is and we understand what's at the core of the
22 registration requirements. It's people who have these firearms
23 who owned them prior to the date of the enactment have to
24 register the firearms going forward so that if they are found
25 with them, the government is alerted that, yes, you proved that

1 you owned these before the statute was put in place, and you are
2 allowed to possess them. So we understand those things.

3 What this is -- the focus of what I think that
4 the factual disputes are going to be is the guns, the nature of
5 the right, the specifics, and whether they fall inside or
6 outside Bevis's -- whether they constitute an arm under Bevis
7 and Friedman or whether they do not. And if they constitute an
8 arm, what's their principal application, is the principal
9 application military, if they are arms, are they commonly held
10 for any lawful purpose.

11 I know that Bevis spent most of his time talking
12 about self-defense in the home, but of course the Second
13 Amendment clearly allows for the right to extend beyond --
14 beyond the interior of their home, beyond their yard, that
15 you're entitled to defend yourself in public. The Supreme Court
16 has also said that the Second Amendment applies for any lawful
17 use, not just self-defense. But at the core, obviously, it's
18 concepts of self-defense and that's why it's such an important
19 and fundamental right.

20 So any of the plaintiffs' lawyers, are there
21 as-applied challenges in your pleadings that would be taken up
22 differently than a simple analysis of the firearms and the
23 attachments themselves?

24 MR. MICHEL: Chuck Michel, Your Honor. I believe
25 we said in our motion papers in our complaint that we were

1 making an as-applied challenge, that it was not perfected at the
2 time of our motion. I don't want to really -- I don't want to
3 waive that, but I also don't want to get bogged down in that for
4 the purposes of this evidentiary hearing. I think we're better
5 off focusing --

6 THE COURT: No, that's a great point. And I
7 think that's some of the things that I want the plaintiffs'
8 lawyers to talk about. That's some of the things that we want
9 the defense lawyers to talk with the plaintiffs' lawyers about.
10 And as long as we are -- as long as we're moving forward towards
11 developing a full record with respect to these firearms, I'm
12 happy with that. There might be some -- there might be some
13 unique wrinkles that the parties might agree that they -- they
14 live to fight another day on that one, and there are some things
15 that are raised in the pleadings that even if the United States
16 Supreme Court granted certiorari, that those claims may not be
17 addressed by the Supreme Court on certiorari.

18 So any other plaintiffs want to be heard on that?
19 All right. Thank you. Think about your case, think how long it
20 will take you to present it, think about the way it can be
21 expedited. You know who the experts are.

22 Mr. Wells, you took depositions of -- or people
23 on your staff took depositions of certain witnesses who offered
24 affidavits with respect to the vagueness claims. You know, I
25 don't know how much of that's redundant. But if you put your

1 heads together, I think you'll find you guys can make a very
2 effective presentation on behalf of your clients' interests,
3 even in a case on an expedited docket.

4 All right. Anything else? All right. Enjoy
5 your weekend. We are adjourned.

6 (Proceedings concluded at 2:20 p.m.)

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10 **COURT REPORTER'S CERTIFICATE**

11 I certify that the foregoing is a correct
12 transcript from the record of proceedings in the above-entitled
13 matter.

14 Dated this 13th day of January, 2024

15 /s/ Hannah Jagler

16
17 _____
18 Hannah Jagler, RMR, CRR, FCRR
19 Official Court Reporter
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